

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

CHARLES W. EISNNICHER, JR.,

Petitioner,

v.

CASE NO. 2:05-cv-522

CRIM. NO. 2:03-cr-205

JUDGE FROST

MAGISTRATE JUDGE KEMP

UNITED STATES OF AMERICA,

Respondent.

**OPINION AND ORDER**

On August 3, 2005, the Magistrate Judge issued a *Report and Recommendation* pursuant to Rule 4 of the Rules Governing Section 2255 proceedings recommending that this action be dismissed. Doc. No. 30. Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*. Petitioner objects to the Magistrate Judge's conclusion that neither *United States v. Booker*, 125 S.Ct. 738 (2005), nor *Blakely v. Washington*, 124 S.Ct. 2531 (2004), are retroactively applicable to cases on collateral review. *See Humphress v. United States*, 398 F.3d 855, 860 (6<sup>th</sup> Cir. 2005).

Pursuant to 28 U.S.C. 636(b)(1), this Court has conducted a *de novo* review of those portions of the *Report and Recommendation* objected to by petitioner. For the reasons discussed in the *Report and Recommendation*, petitioner's objections are **OVERRULED**.

The *Report and Recommendation* is hereby **ADOPTED AND AFFIRMED**. This case is **DISMISSED**.

/s/ Gregory L. Frost

GREGORY L. FROST

United States District Judge